
**COMMISSION MEETING
THURSDAY, JANUARY 11, 2001
MINUTES**

Vice Chair Orr called the meeting to order at 1:30 p.m., at the DoubleTree Guest Suites & Inn, at Seattle. He announced that Chair McLaughlin, Commissioner Parker and Commissioner Forrest could not be present, and that our Ex Officio members were not present due to the Legislature being in session. Commissioner Forrest is joining the meeting via telephone conference call. Vice-Chair Orr introduced the following attendees:

MEMBERS PRESENT:

**COMMISSIONER and VICE CHAIR, GEORGE ORR;
COMMISSIONER CURTIS LUDWIG;
COMMISSIONER MARSHALL FORREST;**

OTHERS PRESENT:

**ROBERT BERG, Deputy Director, Operations;
ED FLEISHER, Deputy Director, Policy & Government Affairs;
CALLY CASS-HEALY, Assistant Director, Field Operations;
DERRY FRIES, Assistant Director, Licensing Operations;
AMY PATJENS, Manager, Communications & Legal Dept.
JERRY ACKERMAN, Assistant Attorney General;
SHIRLEY CORBETT, Executive Assistant**

Vice Chair Orr introduced and welcomed Paul Dasaro, Steve Yang, Kevin Revoir and Cheri Jackson, four new Commission employees participating in the Commission's partnership program.

1. NEW LICENSES, CHANGES, AND TRIBAL CERTIFICATIONS:

Deputy Director Fleisher noted that Club Fiji was removed from the House-Banked Card Room Approval as scheduled on the agenda. However, they have two licenses that were temporarily approved by the Director last month; an E5 Card Room License and a Punchboard Pull-Tab License, which appear on the list for approval today. As a general rule, when charges are brought against an existing licensee, the Commission does not take administrative action on the license until the pending criminal cases are resolved. Consistent with that policy, staff recommends that the Club Fiji licenses for the E-5 card room and the pull-tab remain on the list and that the Commission approves them as part of the list. Once the pending criminal case is determined, staff will take appropriate administrative action as necessary.

Commissioner Ludwig made motion seconded by **Commissioner Forrest** (via telephone) to approve the new licenses, changes and tribal certifications listed on pages 1 through 33 of the agenda packet under License Approvals. *Vote taken; the motion carried with three aye votes.*

2. REVIEW OF FRIDAY'S AGENDA:

Amy Patjens, Manager, Communications & Legal Department, reported two changes to Thursday's agenda. Staff requests that Club Fiji's Card Room Approval be postponed and the Petition for Net Return Waiver by the Spokane Valley Foundation be held over until the Commission adopts permanent rules concerning net income.

On Friday, there will be a brief Legislative Update by Deputy Director, Ed Fleisher. The Bingo net return rules were scheduled for final action, but staff is requesting they be held over to February. There are rules up for discussion dealing with different types of Pull-tab games, license fee rules and rules relating to tracking card room employees. **Ms. Patjens** noted an electronic gambling equipment rule pertaining to use in promotional contests of chance would be up for discussion and possible filing.

**3. QUALIFICATION IV REVIEW (Follow-up Report):
Spokane Athletic Roundtable, Spokane:**

Robert Berg, Deputy Director, directed the Commissioners attention to a one-page memo dated December 28th with regard to Spokane Athletic Roundtable. He recalled that this issue was before the Commission on several occasions and had been returned to staff for further investigation. Staff was also directed to make a report to the Commission this month. The initial financial investigation has been completed and the matter has been forwarded to the Communications and Legal Department. Staff is now asking that the Commission continue its action by returning the application to staff for further investigation so the administrative process currently being undertaken can play itself out. Mr. Berg affirmed a motion and a vote are in order because of the motion and vote taken at the last Commission meeting.

Commissioner Ludwig asked if the three options Mr. Berg pointed out in his memo were the only options. **Mr. Berg** concurred. He added that staff is looking at rewriting that rule to provide some other flexibility and to deal with some other issues. Speaking generally, Commissioner Ludwig felt that if somebody isn't qualified to continue, one of the options that should be available to the Commission should be the ability to deny the license. Mr. Berg clarified that the only issue before the Commission is their review of the qualifications of this organization. Based on the qualification review, it is not necessarily contemporaneous with the expiration of or the denial of a license. Mr. Berg believed that the use of the term "license" in the WAC itself is inappropriate – it's more of a certification that the Commission is doing, finding that an organization is a qualified, bona fide charitable or nonprofit organization. Mr. Berg advised if there was any action taken against the licensee, because Commission or staff's finding, that would be subject to the Administrative Procedures Act.

Commissioner Forrest clarified that in this phase of the proceeding, the Commissioners are concerned with the charitable nature of their operations rather than their right to conduct Bingo. **Mr. Berg** affirmed and noted that one of the issues that staff have dealt with is that they have always blended the significant progress aspect of a qualification review with the net return issue, when, in fact, the purpose of the qualification review is only to determine if the applicant is qualified to conduct gambling activities as a charitable organization. In many of the net return cases, other action is taken or there are waivers requested because they are definitely a charitable organization qualified under the WACs. However, there's an issue about how much money they're bringing back into the operation. In this case, it is a significant progress issue and so the question becomes are they, in fact, by the Commission's rules a charitable or nonprofit organization, because if not, then they are not authorized to conduct gambling activities. That is the issue why this licensee is going through an administrative process.

Commissioner Ludwig made a motion seconded by **Commissioner Forrest** (via telephone) to return the Spokane Athletic Roundtable application for further staff investigation. *Vote taken; motion passed with three aye votes.*

4. **HOUSE-BANKED CARD ROOM APPROVAL:**

Thunderbird Casino & Lounge, Yakima:

Derry Fries, Assistant Director, Licensing reported this organization has applied for a license to operate up to nine tables of house-banked card games. They were formed as a privately held corporation in October 1997, and the corporate headquarters is located in Yakima, Washington. The corporation is presently licensed by the Commission to operate Punchboard/Pull-tabs at a Class E level and a public card room at a Class E level. Special agents conducted a criminal and personal background investigation on all substantial interest holders and initiated and completed a financial investigation on both the corporate and individual stockholders' finances to include their spouses. Special agents also conducted an onsite pre-operational review and evaluation (PORE), in accordance with the rules of the Commission. The applicant was found to be in compliance. Staff recommends that based upon the results of the license investigation, SPTS Bar, Inc., d/b/a Thunderbird Casino & Lounge be licensed as a house-banked public card room and be authorized to operate up to nine tables.

Charles Egley, Corporate President, and **Fred McCloaskey**, Corporate Treasurer, introduced themselves.

Commissioner Ludwig asked if they were scheduled to open this week. Mr. McCloaskey advised they were anticipating opening the 25th of this month—they were training people. Mr. Egley expressed appreciation for all the assistance they received from the Gambling Commission. **Vice Chair Orr** asked how many employees they anticipated hiring, and **Mr. Egley** responded that they were starting with approximately 51 employees.

Commissioner Ludwig made a motion seconded by (via telephone) authorizing the Thunderbird Casino & Lounge

in Yakima be licensed as a house-banked card room in the state of Washington. *Vote taken; the motion carried with three aye votes.*

5. **HOUSE-BANKED CARD ROOM – PHASE II REVIEWS:**

Last Frontier, LaCenter:

Cally Cass-Healy, Assistant Director, reported that the Last Frontier is a commercial restaurant, lounge and card room. M & M Gaming Incorporated owns the Last Frontier, and the ownership consists of George Teeney with 90.47 percent and Fred Farrah holding 9.53 percent ownership interest. Teeney and Farrah also own The Dragon Slayer d/b/a The New Phoenix in LaCenter, Washington. This organization began conducting house-banked games on June 30, 2000. The licensee is currently operating six house-banked games, including four Lucky Lady Blackjack, one Spanish 21, and one Fortune Pai Gow game. They also operate nine poker tables incorporating rakes and player-supported jackpots. Staff conducted a comprehensive investigation including a review and observation of key operating departments. The review team compared actual operating procedures to those documented in the card room rules. The licensee's written internal controls were also compared to the card room rules to ensure compliance and consistency. The intensive review of operating procedures was completed for the five key operating departments, including gaming operations, the cashier's cage and count room, security, surveillance, and the accounting department. They also did a comprehensive review of the gaming and organizational records by selecting a sample of gaming and other records to ensure record-keeping requirements documented in the card room rules and the licensee's internal controls were in compliance and no hidden ownership or unreported third party financing existed. This included a review of the licensee's master games report, cage inventory count sheets, cage reconciliation, payroll records check, registered bank statements, and general ledger. The city of LaCenter was contacted to verify the licensee was current on all gambling taxes and the police department was contacted to verify there had been no adverse impacts of the card room on the community. All violations noted during the review were corrected and staff recommends approval for this facility to operate at Phase II wagering limits.

Commissioner Ludwig said he was familiar with the name Last Frontier for a long time – longer than six months. **George Teeney** affirmed the card room was licensed in 1988 and became an Appendix C facility two years ago. They chose not to put in house-banking until just recently.

Commissioner Ludwig made a motion seconded by **Commissioner Forrest** (via telephone) to approve the Last Frontier located in LaCenter for Phase II wagering limits of \$100. *Vote taken; the motion passed with three votes.*

The Silver Dollar Casino, Tacoma:

Cally Cass-Healy, Assistant Director, reported that The Silver Dollar Casino is a commercial restaurant, lounge and card room located in Tacoma. Little Nevada Gaming III Incorporated owns the organization and the ownership consists of Tim Isley with 70 percent stock interest and Michael Isley with 30 percent stock interest. Both men have ownership interest in The Silver Dollar Casinos in Tukwila, SeaTac and Mountlake Terrace. The Silver Dollar began conducting house-banked games on June 8, 2000 and the licensee is currently operating 15 house-banked tables, including seven Blackjack, two Spanish 21, one Let It Ride, two Fortune Pai Gow Power, one Caribbean Stud, one Progressive Blackjack and one Red Dog. A comprehensive investigation was conducted, including review and observation of key operating departments and a review of gaming and organizational records. In addition, the city of Tacoma was contacted to verify the licensee was current on all their gambling taxes and the Tacoma Police Department verified there had been no adverse impacts on the community. Based on the review, staff recommends The Silver Dollar Casino of Tacoma be approved for Phase II wagering limits. All violations noted were corrected.

Tim Iszley introduced himself. **Commissioner Ludwig** questioned where the various casino establishments were located and was informed that the Tukwila facility was located across the street from the Riverside, and the Sea-Tac facility was located across from the airport by the Super 8 Motel.

Commissioner Ludwig made a motion seconded by **Commissioner Forrest** (via telephone) to approve The Silver Dollar Casino of Tacoma for Phase II wagering limits. *Vote taken; the motion passed with three votes.*

Players Casino Sports Club & Grill, Federal Way:

Cally Cass-Healy, Assistant Director, reported that Players Casino Sports Club & Grill is a commercial restaurant, lounge and card room located in Federal Way. It is owned by Imbibery II Incorporated. The ownership consists of Jim Routos and Arnold Whipple, each holding 50 percent interest. Routos also owns as a sole proprietor the Royal Club Casino located in Seattle, Washington and Rudy's Sports Bar and Grill located in Burien, Washington. Players began conducting house-banked games on June 14, 2000. The licensee is currently operating nine house-banked games including three Blackjack, two Spanish 21, one Let It Ride, two Fortune Pai Gow Poker, and one Progressive Blackjack. Staff conducted a comprehensive investigation including checking with the city of Federal Way to verify the licensee was current on all gambling taxes and with the Federal Way Police Department to verify there had been no adverse impacts of the card room on the community. None were noted. All violations noted during the review were corrected and staff recommends approval to operate at Phase II wagering limits.

Commissioner Ludwig asked if the other two card rooms were licensed establishments. **Ms. Cass-Healy** affirmed. **Jim Routos** responded that the Royal Club Casino operates at the Phase II house-banked level and Rudy's at a Class E card room.

Commissioner Ludwig made a motion seconded by **Commissioner Forrest** to approve Players Casino Sports Club & Grill in Federal Way for Phase II wagering limits to \$100. *Vote taken; the motion passed with three votes.*

6. **PETITION FOR NET RETURN WAIVER – Spokane Valley Foundation:**

Vice Chair Orr announced this item is being held over until over until the Commission adopts permanent rules concerning net income.

7. **REQUEST FOR REVIEW:**

Byron Desautel, Auburn, Card Room Employee

Vice Chair Orr noted the Request for Review was scheduled for 2:30 p.m. He decided to change the agenda order, to hear Item No. 8 and to then return to the Request for Review at 2:30 p.m.

8. **OTHER BUSINESS/GENERAL DISCUSSION COMMENTS FROM THE PUBLIC:**

Mr. Fleisher noted there has been some discussion regarding the possibility of changing the Commission meeting dates at some time within the year. It is suggested that rather than meeting on the second Thursday and Friday of the month, meeting on Tuesday and Wednesday or Wednesday and Thursday. Staff is gathering comments on preferences.

Vice-Chair Orr called for comments from the public.

Aaron Essman, Boys and Girls Clubs of Pierce County, **Richard Wilson**, Executive Director for the Brain Injuries Association of Washington, and **Bob Lambert**, Board President with the Brain Injuries Association of Washington said they wished to comment on the proposed changes regarding the net return changes for Bingo operations.

Mr. Essman affirmed receipt of a letter from Director Bishop on the 15th of December, which asked for written comments about the proposed changes in the Bingo net return regulations. At that time, a group from Pierce County including the Amvets Post #1, the Gateways for Youth and Families, the Lakes Moose Lodge, the Lakewood Elks, the Port Orchard Knights of Columbus (who actually aren't in Pierce County), and the Visiting Nurses met to discuss the letter. They had concerns. They were worried about the timing of the letter -- they noted a lot of the Bingo halls did not receive the letter directly; it went to their administrative offices first, and with the holidays, there wasn't much time for discussion. **Mr. Essman** addressed their main concern about the change in the regulations is the effect it will have on the charities and nonprofits. They are worried about the amount of dollars that have to be returned to the nonprofits and they are worried about how this change is going to affect the smaller Bingo operations. He believed the larger operations will have the ability to sustain smaller returns to their nonprofits longer – and that this change may lead to the end of the smaller game because they cannot compete. **Mr. Essman**

explained that as a group they didn't really understand or didn't have time to understand the changes. He asked for further clarification or the chance to meet with the Commissioners before the next meeting to discuss the rules. Mr. Essman indicated his group would also like to discuss the license fees that nonprofits are currently being charged, they would like to discuss the impact of those licenses on their operations.

Mr. Wilson emphasized that they raise money for the organization so they can help people who have brain injuries. He asked how this regulatory change would impact the Bingo market, and what is it going to do to the customer base? **Mr. Lambert** emphasized the same thing and noted the Brain Injury Associations are really dependent on the Bingo parlor. They are trying to develop other means of funding through grants, but if their profit margin goes down and expenses go up with Bingo, they will find it very difficult to serve their clients. **Commissioner Ludwig** affirmed that he is concerned about their comments. He explained that it has always been his worry that should we reduce the net return requirement substantially, there could be some predatory practices. He emphasized the Commission is trying very hard to simplify the net return requirements and to make it easier for everybody. **Mr. Lambert** reiterated that they wanted to make sure they understand as best they can the impact of these changes on their organization, in general, because everyone will be faced with some very critical issues. If they don't understand what the impact is going to be, they can't make good, wise business decisions.

Vice Chair Orr called for further questions and additional public comment, and there was none. The meeting was recessed until 2:30 p.m.

9. REQUEST FOR REVIEW:

Byron Desautel, Auburn, Card Room Employee

Byron Desautel appearing Pro Se, and Neil Gorrell, Attorney General's Office presented their cases in the matter regarding this review to determine whether the Administrative Law Judge's Initial Order suspending Byron Desautel's license to conduct gambling activities for one year, should be upheld or, in the alternative, modified.

Vice Chair Orr called for an executive session to deliberate Commission Action.

Vice Chair Orr reconvened the meeting and reported that the three Commissioners decided to affirm the administrative law judge's findings and conclusions. The Commission directs a revocation of Mr. Desautel's license for one year, commensurate with the administrative law judge's recommendations.

10. ADJOURNMENT:

At 5:10 p.m. **Vice Chair Orr** declared the meeting adjourned until 9.30 a.m., January 12, 2001.

**COMMISSION MEETING
FRIDAY, JANUARY 12, 2001
MINUTES**

Vice Chair Orr called the meeting to order at 9:30 a.m., at the Double Tree Guest Suites & Inn at Seattle. The following attendees were present:

MEMBERS PRESENT: COMMISSIONER and VICE CHAIR, GEORGE ORR;
COMMISSIONER CURTIS LUDWIG;
COMMISSIONER MARSHALL FORREST;

OTHERS PRESENT: ROBERT BERG, Deputy Director, Operations;
ED FLEISHER, Deputy Director, Policy & Government Affairs;
CALLY CASS-HEALY, Assistant Director, Field Operations;
DERRY FRIES, Assistant Director, Licensing Operations;
AMY PATJENS, Manager, Communications & Legal Dept.;
JERRY ACKERMAN, Assistant Attorney General;
SHIRLEY CORBETT, Executive Assistant

1. **MINUTES – November 16 & 17, 2000:**
Commissioner Forrest made a motion seconded by Commissioner Ludwig to adopt the minutes of the November 16 & 17, 2000, meeting as presented. *Vote taken; motion carried with three aye votes.*
2. **STAFF REPORT – LEGISLATIVE UPDATE:**
Deputy Director Ed Fleisher reported that the 2001 Legislative Session started this week. Our agency request bill on cheating at gambling has been introduced in the Senate under Senate Bill 5064 and is up for a hearing in Senator Prentice's committee next Monday. It will be introduced in the House as well next week. Staff expects it will move smoothly through the process. No other gambling bills have been introduced to date on gambling. Mr. Fleisher advised that the charitable and nonprofits will be reintroducing legislation similar to what they had two years ago to authorize "Class II" Bingo machines for the charitable Bingo operations. Final draft legislation is not available at this time, but will be provided in future legislative updates.

Rules Up For Final Action

3. **Bingo Net Return Task Force Rules**
WAC 230-04-260; WAC 230-20-059; WAC 230-20-062; WAC 230-30-052; WAC 230-50-010; WAC 230-02-138; WAC 230-02-362; WAC 230-02-364; WAC 230-02-366; WAC 230-02-530; WAC 230-02-535; WAC 230-02-540; WAC 230-20-058; and WAC 230-20-060.
Deputy Director Ed Fleisher noted these rules have been discussed for several months. Staff recommends they be held over to next month for final adoption and be effective on April 1st. Staff would like them to be effective at the beginning of a quarter to simplify reporting processes for the organizations.

Commissioner Forrest asked if there had been any vehement objection from the industry. **Deputy Director Fleisher** responded that the informal comments received had been generally quite positive, however, there was one letter in the agenda packet expressing concerns from a group of organizations from Pierce County. Mr. Fleisher explained that on December 15th, staff sent out a revised version of the objectives and assumptions as well as a copy of Version #4 and some tables showing how it would affect the 47 licensees. The two main goals with these rules are to simplify the process as much as possible while still keeping it fair and meeting basic accounting standards, and to focus the measurement on the dollars that are available from the Bingo operation for the stated purposes of the charity or nonprofit. He reminded everyone that these set the minimum standards, failure to meet them would result in sanctions. As such, staff hoped that licensees would try to make the maximum amount of money and profit from their operations and have that available for the stated purposes.

Commissioner Forrest commented that once these are in place, there might be some continued casualties among the operators of Bingo games. He affirmed that once these are adopted, if an organization doesn't meet the standard, the Commission regrets it, but will not be inclined to have another short term fix or another continuation. If this is a shrinking market, eventually some people will have to leave, unless the legislature does something drastic. Commissioner Forrest believed this rule represents the Commission's last best effort to keep Bingo games going to support the purposes that they were authorized for -- if the licensee can't meet the minimum contribution, the Commission and licensee will have to sadly, but firmly, recognize that they may have to close. **Deputy Director Fleisher** added that it would be staff's intention if these rules become effective on April 1st, to not look back to the previous 12 months. Rather, they will be looking forward from April 1st.

Deputy Director Fleisher discussed Item 3(b) WAC 230-20-059. He noted there are 14 rules in the whole package. Of those 14, assuming this version of WAC 230-20-059 is adopted, of the other 13 rules 10 are repealers of existing rules and the remaining three are merely fixing cross references and language to conform with the provision of the main rule. Following last month's meeting, staff made some changes to the rule. Subsection 1 of the rule states the basic standard the licensee has to meet to be in compliance. He noted there was a lot of discussion last month about cash flow being the real measure of the standard. Staff discovered this puts the basic standard as net income. Going to a pure Generally Accepted Accounting Principles (GAAP) cash flow analysis, it did not bring us to our goal of simplification. Cash flow from an accountant's point of view is a complicated concept. Staff came to the conclusion that if you want to look at the long term health of an organization, net income is really the best measure or snapshot of how healthy that organization is.

The first paragraph is the net income standard. Recognizing the cash flow concerns and the issues that were raised about expenses such as depreciation, which are negative on net income, but really are not cash being paid out -- an exception exists at the bottom of Section 1, which is a vastly modified version of cash flow from an accountant's point of view. It says that if you don't meet the net income requirement, in the alternative, you can meet this requirement if your cash flow from Bingo operations meets it. **Mr. Fleisher** pointed out that subsection of the rule contains the definition of positive cash flow from Bingo operations and the adjustments. For the purpose of computing expenses in this calculation, the use of resources that do not require current use of cash assets such as depreciation or amortization shall not be considered an expense of the Bingo operation. This is saying those non cash expenses can be added to your net income number and at that number, if you meet the minimum requirement, one is still in compliance. The WAC contains a definition of positive cash flow from Bingo operations slightly different than what is used in this proposal, and staff discovered this is the only rule in the WAC that uses that term. Therefore, staff decided to recommend repealing that definition from the definition sections and putting it directly in this rule. **Commissioner Forrest** said he was not quite clear on the difference between these two -- the second alternative with the special definition of cash flow and how that related to the first alternative.

Deputy Director Fleisher responded that if a licensee with gross receipts between \$375,000 and \$625,000 is required to have three percent, the net income equal to three percent of gross receipts. If they made that measurement and their net income was not equal to three percent of gross receipts, the bottom of that subsection says in the alternative, they can figure their cash flow from Bingo operations. If their cash flow was equal to three percent, they would be qualified. Subsection 1 and 2 sets the standards and definitions. Subsections 3 and 4 establish the sanctions if one fails to meet the standards. Subsection 3, which is not changed from last month, is the positive cash flow issue, and Subsection 4 is the sanctions for simply failing to meet the net income requirements. Mr. Fleisher noted that if a licensee does not maintain a positive cash flow averaged over any two consecutive

calendar quarters, they will be deemed to be operating primarily for gambling purposes and the director may take action to summarily suspend the license. Staff has recognized that Bingo is a very cyclical business and they didn't want to have any formal sanctions until an organization did not meet the requirements for a full year. Subsection 4 (a) states that if a licensee fails to meet the net income requirements averaged over any two consecutive calendar quarters, no action will be taken against their license. However, the licensee will need to develop a plan to gain compliance, take immediate steps to start implementing that plan, and report the plan to the Commission. Subsection 4 (b) sets the provision regarding a full year -- that if a Bingo licensee fails to meet the net income requirements, averaged over four consecutive quarters, then administrative action shall be taken to revoke the Bingo license.

Commissioner Forrest affirmed there should be a cash flow and a net income way of doing it. **Deputy Director Fleisher** affirmed that both 4 (a) and 4 (b) whether one meets the net income requirements under the basic rule or the alternative of Subsection 1, the licensee would be in compliance. He suggested in Section 4, the first line should read "if a Bingo licensee fails to meet the net income requirement" and that staff should probably strike net to clarify the rule. The intent is if one meets the income requirements of Section 1 either under the basic rule or the cash flow alternative, they would be in compliance. **Commissioner Forrest** believed that made sense.

Deputy Director Fleisher explained Subsection 5 defines the two variance possibilities. Item 5 (a) says that a licensee who fails to meet these income requirements but is within 90 percent of them may petition the Commission for a one-time variance based on their plans to gain game compliance over the following year. The Commission doesn't want to take administrative action against a licensee who fails (over a year period) to meet the minimum by a dollar or \$10. At the same time, if the licensee doesn't meet the requirements, staff would like the licensee to come forward to the Commission with a plan as to how they are going to do better in the future, before a variance is issued. Subsection 5 (b) is the other opportunity for a variance and deals with licensees who have an expense locked into a long term lease or possibly a mortgage obligation on their Bingo hall. In those situations, this rule would allow the licensee to come before the Commission and petition for a variance of not more than two years based on a plan to gain compliance in that period. It has been questioned whether that variance could allow them to operate at a negative cash flow. Staff's intent would be no, the last sentence of the variance stipulates the variance must be in a dollar amount. Mr. Fleisher believed the Commission would not ever grant a variance that would drop a licensee's minimum requirement below zero. However, variances would be on a case-by-case basis.

Deputy Director Fleisher noted that a document titled "Minimum Net Income Sample Data" was developed for discussion and provided examples of how the rule will work. Mr. Fleisher briefly reviewed an example of a licensee being in compliance one quarter and then not being in compliance in subsequent quarters. **Commissioner Forrest** asked why two systems are needed when what we really care about is the cash that goes to support the activities -- why do we need all this net income? Mr. Fleisher explained that the easiest way to deal with the modified issue of cash flow is to first get to net income under the standard GAAP accounting principles that get you to net income and then make the individual adjustments for depreciation and amortization. Commissioner Forrest asked if we juggle the figures, one could wind up meeting the net income requirement and have no cash flow or a minimum cash flow? Mr. Fleisher said theoretically you could, and Commissioner Forrest asked why we would want to do that. Mr. Fleisher said that could occur in a case where a licensee had a healthy amount of net income, but had made major capital expenditures that quarter, for example, if they replaced all their Bingo equipment. If we went to a pure cash flow, we could have situations where a licensee didn't meet the requirements because they made logical business decisions to purchase or replace equipment. This would lower their cash flow for a certain period of time --even though their net income was healthy and they were a healthy business operation. If you really want to go to cash flow, we are making the adjustments for a positive aspect of cash flow from their point of view, i.e. expenses that aren't true cash expenses. If you go strictly to cash flow, you have to look at the other side of the ledger, when the business was starting up or replacing equipment, even though they were in very good financial condition and they were a healthy operation that will last in the long run, they had major expenditures of cash which would force sanctions on them.

Commissioner Forrest said that in theory a business could run along for three years -- fancying up; getting better lights and new paint, and in the meantime, the kids wouldn't get any dollars. **Deputy Director Robert Berg** agreed. In a strictly cash flow analysis, the question should be, is there money going back to the charity or nonprofit? The dollars measured at the margin for a huge operation would be in real dollars the same standard as applied to a very

small operation. The net income aspect allows for the measurement against how big the game is. He explained that getting from net income whether or not it's a positive cash flow is like decision points. Did they meet their net income? The answer is no. Did they have a positive cash flow? The answer is yes. You move to the next quarter. Did they meet their net income then? No. Did they have a positive cash flow? Yes. Then they have to file the action plan – they're not going to be summarily suspended because they have a positive cash flow, but they haven't met their net income. If they say no for the two quarters in a row, then we summarily suspend the license.

Commissioner Forrest suggested that we have the cart before the horse. He didn't like the idea of someone running for five years and no money going to the charitable purpose. He believed there may have to be some exceptions – but the important thing is the charitable purpose. The licensee could have the prettiest net income in the world, but if real live dollars don't go to the charitable purpose, he questioned why the licensee should be in business. He wished the rule was reversed – that one has to have a minimum cash flow they have to produce – then perhaps an addition to have some net income requirements, which he's not convinced is necessary. Commissioner Forrest said he is not satisfied with a system that winds up with no guarantee that money will flow to the charitable purpose without some sanction from the Commission. The proposed system will permit that indefinitely. The worst case scenario is that at the end of 10 years, not a nickel has gone to the charitable program, but they have a beautiful hall and they have all the goodies in the world. **Deputy Director Fleisher** explained that under straight cash flow, the organization that wanted to start up could never meet the requirement because of all the first year operational purchases, which would be capitalized for purposes of an income statement. Commissioner Forrest said they could and explained that if he started a soccer support team, and he talked to his board of directors and advised that for \$50,000 he could set up a Bingo hall and make money. The board could conduct a fund drive and raise the \$50,000 -- all you have to do now is pay the prizes and the salaries of the people who run it – you've got positive cash flow. The game doesn't have to generate the initial investment. Mr. Fleisher clarified that the money the game spends to set up their operation up is going to be a large expense that will be capitalized and spread over a number of years for net income purposes. On a cash flow statement, they would have to show all that in the first year. Commissioner Forrest believed there is a difference between an investment and saying an operation generates a cash flow. He didn't think we should say the Bingo proceeds are supposed to finance the hall. Commissioner Forrest was not in favor of a process that would allow a licensee of a charitable nonprofit corporation to take 10 years (for example) to amortize and pay for a new hall, during all of which time no money flowed to the charitable purpose.

Commissioner Orr verified that what Commissioner Forrest really wanted to see -- is that at the end of the quarter there's a check to the sponsor. **Deputy Director Fleisher** acknowledged that staff is trying to get as close to that as possible. However, if we modify the cash flow (because GAAP cash flow doesn't work and is complicated), that cash flow is much easier for a Bingo operation to manipulate than the net income number. **Commissioner Forrest** said it seemed much less simple. If in honest returns, a business took in so much money and they paid so much money to the charitable purpose. He questioned how it could be manipulated. Deputy Director Fleisher said that if we are just talking about what check was written at the end of each quarter, a licensee could easily hold off paying their accounts payable. If the licensee needed to get \$50,000 to the kids and only had \$30,000 they could hold off making payments in their accounts payable. They may be able to sustain it over a quarter, but not the long run. Commissioner Forrest concurred that the creditors would close them down.

Commissioner Forrest said the view he was advocating was his own, the critical thing is cash flow – and that's not an alternative way of satisfying the rule. Net income might be an alternative way of satisfying cash flow conceivably. The idea that an operation can go on indefinitely without producing money for a charitable purpose was unacceptable to Commissioner Forrest. **Commissioner Ludwig** said for the record that Commissioner Forrest's comments make a lot of sense to him as well. **Commissioner Orr** said it seemed simpler.

Deputy Director Fleisher addressed the income statement and affirmed that if an organization spends a million dollars for a building, the expense isn't shown as an expense the year the money is spent; it is a capitalized asset – it can be amortized over 30 years, and each year the depreciation schedule shows. On a cash flow statement, the million dollars does show up the year that it's spent – it doesn't on the income statement. In regard to net income, the expense of the purchase may be spread over the life of building. He said staff would continue to work on this issue and possibly, as Commissioner Forrest suggested turn the alternatives around to make the modified cash flow as the measure, and the net income the alternative.

Deputy Director Fleisher referred to the last net income example, which used the same organization, looking at the next quarter, things got even worse. For the average of the last two quarters, they were (under the rule) supposed to have at least \$50,000 available for the charity purposes. In fact, as you see at the bottom of the page, they actually had a negative cash flow – they had a \$2,400 negative on average for the last two quarters. This would kick in the sanctions under subsection 3 and the director would have the authority to summarily suspend their Bingo license at that point. **Deputy Director Fleisher** affirmed the examples were simply to show how the sanctions worked. **Commissioner Orr** opened the meeting for public discussion.

Steve Strand, King County Big Brothers/Big Sisters believed some of the terminology definitions caused some confusion. He emphasized that net income is a proper standard to begin with as it invokes proper GAAP accounting and legitimate and standard business practices that provides for a solid number for all expenses accrued and are part of a regular program. In the modified portion, staff endeavored to include some significant non-cash expenses such as building or equipment depreciation. Those are monies that are available to the sponsoring nonprofit organization or program because they are expensed off, but not as a cash flow expense. In regard to cash flow, that's a significantly different number to come up with as opposed to cash available to the organization to spend. Mr. Strand said that if the number we're looking for is the money available to the sponsoring organization to spend on programs, the modified net income with the alternative deemed as cash flow is an appropriate number – what is actually available to spend. **Commissioner Forrest** suggested that instead of cash flow, we say cash available for charitable purposes, and have some series of gradations – some percentage of the gross operation which has to end up available for charitable purposes. He wasn't concerned about the nomenclature difference between net cash flow and cash available for charitable purposes -- the bottom line is that money has to come in and be available for the charitable purposes.

Mr. Strand thought there be a misunderstanding on the base line. The result that we're striving for is the money available to take from the agency to do with it as it sees fit. That hasn't changed under the old pre-moratorium, during the moratorium program, or this figure. He explained that the number we're striving to arrive at as the minimum standard expected, is that amount that is available to the organization for their purposes. **Commissioner Forrest** asked if there was a large depreciation charge, and if one assumed that depreciation charge was available for the charitable purpose, that an organization would be able to meet a cash flow test as written. Mr. Strand agreed.

Mr. Strand went on to speak as President of the Washington Civic and Charitable Gaming Association. He noted there was one minor change in this format and it shows in the examples where the judgment has been placed on the average of two quarters rather than two independent quarters. The WCCGA believed this is a significant change and Mr. Strand advised his group would support reviews in independent quarters because that has been consistent with the years past where they have been judged on a quarter-by-quarter basis, not necessarily an average of the two.

Don Kaufman, Spokane Big Brothers/Big Sisters, Spokane echoed Mr. Strand's comments about the averaging of the two quarters. He also pointed out a problem – staff has placed sanctions into that rule and then there is still another rule with sanctions in them. He addressed WAC 20-062, Item #3, which talks about any licensee that fails to achieve the minimum net return requirement and does not maintain a positive cash flow from the Bingo operation for any two consecutive calendar quarters – and the fact that it addressed averaging those quarters. Mr. Kaufman believed that the word “averaging” needed to come out. He felt the language should address having two bad quarters in a row, not one quarter tainting the other quarter, because the cyclic nature of Bingo. He noted the third quarter of 2000 was an absolutely horrible quarter – the industry made good money in the first quarter, made pretty good money in the fourth quarter, and made adequate money in the second quarter and third quarter. Mr. Kaufman believed the whole concept of averaging quarters is new – it came out of staff planning - it was not in last meeting's agenda. He encouraged dropping the concept of averaging two quarters. **Commissioner Ludwig** asked for staff's response to Mr. Kaufman's comments.

Deputy Director Fleisher affirmed the previous version didn't have the word average. However, averaging or cumulating over the period, is staff's interest - earlier versions of the rule had not been completely clear on that concept. As far as looking at each quarter individually or cumulating or averaging, staff would disagree with the point just made because it creates the same problem we have with the current rule. It actually recognizes the cyclical nature of this business. If one only looks at each individual quarter alone, then we could have an operation which ran for a calendar year loss – they had a negative cash flow that was significant, but it all occurred in one

quarter, equating to three-quarters of positive cash flow and one quarter of negative. If one looks at the quarters completely standing alone, the Commission could never bring sanctions against that Bingo operation even though over the long run they were having a negative effect on the charitable operation. **Deputy Director** Fleisher affirmed the need to recognize this is a cyclical business, and because of that, we can't just look at the quarters standing alone. That has been a problem with the current rule. **Don Kaufman** disagreed; noting that Section 4 (b) puts the quarters together with a requirement to have a positive structure for four quarters. On an annual basis, the Commission will look at four quarters at a time, but any given two quarters ought to stand-alone. Mr. Kaufman said that's the way net return has been for probably 10 to 12 years. Everything was based on each quarters' performance, not combined quarters. He again pointed out that the two rules were contrary to each other – having sanctions in one rule that talk about averaging the two quarters, and having sanctions in the other rule that talks about the two quarters standing alone.

Joe Wozniak, Board Member of King and Pierce County Big Brothers/Big Sisters reported this subject has always interested him because it's regulatory accounting. Generally speaking, regulatory accounting has always been a problem because it has a tendency to be two things: short term which creates a problem for the business people making long term investment decisions and what they want to do; and the other problem is that it always tries to mix cash flow and profit. Those are two separate items. He explained that you could have very good profit and no cash flow; you can have cash flow and no profit. Mr. Wozniak noted there's nothing in the rule about force majeure impacting a business. The largest force majeure in the United States for retail business is road building. For instance, a government agency takes action to build a road and the project is ongoing (in front of your establishment) for a year, or more. An owner may make the decision to shut down the licensed operation for a period of time – he's paying expenses and everything else, however, he has a negative cash flow because the government essentially put him out of business for a while – now the Commission can turn around and take the license away from him because he hasn't met his requirement. Mr. Wozniak believed staff should go back to 5 (a) and change the 90 percent to 10 percent. He believed that when we say that a licensee has to be at \$100,000 during that period, that establishes the benchmark. Now the range is whatever stated percentage is established. If a licensee is within 90 percent of that percentage, ten thousand and a penny, they would be within 90 percent of that objective.

Vice Chair Orr called any other public comments, there were none and he closed the public hearing. Vice Chair Orr called for a 10-minute recess and reconvened the meeting at 10:50 a.m.

4. New Marketing Schemes for Pull-Tabs:
WAC 230-30-033; WAC 230-30-034; WAC 230-30-036

Sherri Winslow reported that the new marketing opportunity rules were developed in conjunction with the Net Return Task Force. Since the last meeting, the rule has been separated into two rules.

WAC 230-30-033 is for the Event Pull-tabs series, which are only allowed for charities or nonprofit organizations. The game is operated with an event round, which is a second element of chance where prizes are determined based on Pull-tabs that match specific numbers at a Bingo game. The rule is broken into three sections, one for definitions one for manufacturing restrictions, and one for operating restrictions. Some wordsmithing has occurred since the last meeting, and staff eliminated the prohibition against last sale prizes at the request of the manufacturers.

WAC 230-30-034 - Seal cards games, is also structured like the event pull-tab rule with a definition section, manufacturing restrictions and operating restrictions. The seal card game includes a predetermined number of pull-tabs that allow a player a chance to advance to a seal card round. It is played as seal cards are traditionally played across the United States.

WAC 230-30-036 is the Strip Pull-tab series that authorizes strips of Pull-tabs to be played with a single flare with various prize schemes. There were some control concerns discussed with the operators and manufacturers of these games. Many of the controls would have to be corrected for the games to be workable within the state, and that would make them quite costly. Staff had numerous discussions, and the Washington Civic and Charitable Gaming Association along with the originator agreed to pull back the request for the strip-ticket games. They felt the market for the games wouldn't be strong enough because of the \$5 strip cost and the fact that we couldn't allow a winner in every strip. **Ms. Winslow** believed the first two rules would certainly work well, and noted there is a lot of interest

in those two rules.

Vice Chair Orr called for public comment, there was none, and he closed the public hearing.

5. **Licensing Fees:**

WAC 230-04-202; WAC 230-04-203; WAC 230-04-204

Amy Patjens advised that last month the Commission passed an emergency rule to readopt the fees that were implemented as of December 31, 1999. Staff made this request because of Initiative 722, which is the initiative to make tax increases that were adopted between July 2, 1999 and December 31, 1999 invalid. Taxes were defined to include license fees. Since I-722 passed, there has been a legal challenge filed and this has put a cloud over what the proper license fee should be. The emergency rule is in effect and emergency rules can only be in effect for 120 days, which is why staff asked that these rules be filed last month - so the license fees can be reaffirmed on a permanent basis. Staff recommends further discussion.

Vice Chair Orr called for public input, there was none and he closed the public hearing.

6. **Tracking Card Room Employees:**

WAC 230-04-140; WAC 230-04-142

Amy Patjens reported that these two rules were filed after the last meeting and they deal with the process for when a card room employee begins working, transfers to another location, or is no longer working. The change in 6 (a) would decrease the amount of time that a card room has to wait before they can begin to employ someone as a card room employee from 15 days down to 10 days. She noted there was a question after the last Commission meeting. Right now if someone is a substantial interest holder in a partnership or a corporation, they don't have to be separately licensed as a card room employee in order to be able to work as a card room employee. Staff had left out any reference to limited liability companies because that was something that came about in the time between when the rule was originally drafted and this recent rule. Therefore, staff did make a small change to subsection 5 to note that if someone is also a member of a limited liability company, they would not have to be separately licensed as a card room employee.

The second rule, 6 (b) simplifies the process for when a card room employee begins working or transfers to another location. Currently, both the employee and the employer are supposed to notify the Commission. Under the proposed rule, only the employer would notify the Commission. However, the employee and the employer would actually sign the form forwarded to the Commission. Since last month, staff took out the laundry list of what needed to be on the form. Staff believed that if the rule says it's going to be on a form provided by the Commission, we don't need to spell out the items, simply provide the form. If there are additional things required in the future, staff would change the form rather than making a request for another rule change.

Ms. Patjens noted the whole issue of tracking card room employees has changed with the advent of house-banked casinos and tribal casinos opening. Right now there are approximately 5,000 card room employees -- in 1998 there were only about 1,900. We also have almost 5,000 Class III employees -- tracking where these people are is a big project, it's not as simple as it was a few years ago. Staff recommends further discussion.

Commissioner Ludwig asked why the acronym CRE was substituted for the language, public card room employee. He thought a lot of people may wonder what CRE means. Ms. Patjens responded that staff could certainly switch it back. **Commissioner Orr** pointed out that it is probably important that we all speak the same language. He called for public comment and there was none. The hearing was closed.

7. **Electronic Gambling Equipment Used in Promotional Contests of Chance:**

WAC 230-46-080

Amy Patjens reported that last session a bill was passed rewriting the promotional contest of chance law. The law states in subsection 6 that equipment or devices made for use in a gambling activity are prohibited from use in a promotional contest unless authorized by the Commission. Tab Wizard is a pull-tab consulting business and they requested approval to use a gambling device in conjunction with a promotional contest of chance. Ms. Patjens explained Tab Wizard wanted to have this linked up between several different businesses and would not necessarily be limited to Pull-tab operators. She said that although the device does not look exactly like a gambling device, the

graphics look a lot like a gambling device. Someone could either buy something from the business to get entered into the contest, or they could be entered into the contest free of charge, which is required to have that alternative under the promotional contest of chance law. Staff was not comfortable with the proposal and thought it was time to bring forward a rule that would establish some parameters as to what types of devices could be used in promotional contests of chance. Staff also thought it might be nice if these went to the director for approval rather than coming before the Commissioners for approval. The requirements would be that there would be no cost to enter and that there could be no video terminal, spinning reel mechanisms or electronic facsimiles. Staff recommends filing for further discussion.

Amy Patjens called the Commissioners attention to a letter from Tab Wizard, which noted that they did not receive a copy of the rule. She affirmed that was staff's error, that there was no intent to not have them see a copy of the rule before it was on the agenda. Tab Wizard noted that they are not opposed to the rule change, but they don't feel it really resolves the issue. Ms. Patjens noted that Julie Porter, who worked extensively on the promotional contest of chance law last year, also had some comments. Staff recommends filing for further discussion. Ms. Patjens affirmed that staff will get together with the people who have raised comments, and she suggested some slightly different language may appear next month. Overall, the intent is to have some requirements in the rule that the director would be able to follow, and to have the director approve or disprove the devices.

Vice Chair Orr called for comments from the public.

Dennis Zaborac, Tab Wizard, said they support the WAC even though it appears to be designed specifically for their machine. Mr. Everett explained they are looking for more of a comprehensive plan on these devices. The WAC as written is for electronic gambling devices. Mr. Zaborac believed that what they have created is a non-gambling electronic device that can be used for promotional contests. He realized that non-gambling promotional contest devices may be outside the authority of the Commission. Mr. Zaborac asked for more open discussion and some concrete guidelines on what can and cannot be done.

Commissioner Ludwig made a motion seconded by **Commissioner Forrest** to file the rule for further discussion. *Vote taken; Motion passed with three aye votes.*

8. Other Business/General Discussion/ Comments from the Public

Vice-Chair Orr called for any other comments or business items from the public. There were none. **Deputy Director Fleisher** reminded staff there would be a brief executive session and the meeting would be reconvened for adjournment purposes only.

9. Adjournment:

With no further business, a motion for adjournment prevailed at 11:30 a.m.

Minutes submitted to the Commission for approval by:

Shirley A. Corbett
Executive Assistant